IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1488 OF 2005

M/s.Maniyar Plast Limited ...Petitioner.

V/s.

The Union of India & Ors. ...Respondents.

Mr.Madhur Baya for the Petitioner.
Mr.Rajiv Chavan with Mr.S.S.Pakale for the Respondent.

CORAM: S.RADHAKRISHNAN &
J.H.BHATIA, JJ.
DATE : 30th June, 2005.

P.C.:

1. Heard the learned counsel for the Petitioner and the learned counsel for the Respondent.

2. By this Petition, the Petitioner is challenging the order of pre-deposit of Rs.1 Crore passed by the Commissioner of Customs & Central Excise, Nashik to entertain the Appeal filed by the Petitioner.It appears that on 5th March, 2004, pre-deposit order was passed. At that time, the Petitioner was not heard. Thereafter, the Petitioner had moved an application for modification of the order. After hearing the parties on 30th June, 2004, the Customs, Excise & Service Tax Appellate

Tribunal found that the order of pre-deposit of Rs.1 Crore to be fair as the amount out of the total demand was Rs.6.05 crore. Subsequently, the Petitioner had moved for a review. The Customs, Excise and Service Tax Appellate Tribunal had declined to modify the order. Infact, it observed that the Petitioner has sales turnover of Rs.1678 lakhs per year.

2. The learned counsel for the Petitioner strongly relied on the judgment of the Supreme Court in the case of **Tata Davy Ltd. V/s. State of Orissa (1997) 94 E.L.T. 477 (SC).** The above judgment will not apply to the facts and circumstances of the present case.

3. Shri Chavan for the Respondents brought to our notice the judgment of the Supreme Court in the case of **Metal Box India Limited v. Commissioner of Central Excise, Bombay** wherein very issue of pre-deposit under section 35F of the Central Excise Act, 1944 was specifically considered by the Supreme Court with regard to a Company wherein the

Application under section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 was under process. After considering the provisions of Section 22 of the said Act, the Supreme Court has observed in very clear terms that "payment of pre-deposit covered under section 35-F of the Central Excise Act, 1944 does not fall under any of the abovementioned categories in Section 22 of the Sick Industries Act".

4. Under these circumstances we do not find the pre-deposit order of Rs.1 Crore to be arbitrary or unreasonable. We find no merit in the above Petition. The Petition stands dismissed.

(S.RADHAKRISHNAN,J.)

(J.H.BHATIA, J.)